



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Thomas L. Henderson  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **A SPECIAL ORDER BY CONSENT ISSUED TO**

**Lesueur – Richmond Slate Corporation  
Buckingham – Appomattox Ready Mix Plant**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Lesueur – Richmond Slate Corporation for the purpose of resolving violations of State Water Control Law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.

6. “Lesueur” means the Lesueur – Richmond Slate Corporation, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the Buckingham – Appomattox Ready Mix plant located in Appomattox, Virginia, at which Lesueur owns the equipment, leases the real estate, and operates the plant.
8. “SCRO” means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. “VPDES” means the Virginia Pollution Discharge Elimination System.
10. “VAC” means the Virginia Administrative Code.

**SECTION C: Findings of Facts and Conclusions of Law**

1. Lesueur operates the Facility in Appomattox, Virginia. Lesueur has been operating the Facility without a permit since on or about February 1, 2003.
2. Lesueur purchased the equipment at the Facility, and is leasing the real estate from J. E. Sears and Company, Inc.
3. Va. Code § 62.1-44.5.A and 9 Virginia Administrative Code (“VAC”) 25-31-50.A prohibit, *inter alia*, the discharge of “sewage, industrial wastes, other wastes, or any noxious or deleterious substances” to State waters except in compliance with a permit issued from the Board.
4. On March 5, 2004, the DEQ received a pollution complaint that Lesueur was discharging concrete washed from the ready mix trucks to a nearby stream. The DEQ inspected the Facility and the unnamed tributary (hereinafter “UT”) to Purdum’s Branch, James River Basin, on March 5 and 9, 2004. Based on the inspections the DEQ issued Notice of Violation (“NOV”), number NOV-04-03-SCRO-007, on March 25, 2004 alleging the following:
  - a. Operating without a VPDES permit for ready mix plants;
  - b. Unpermitted discharge of concrete to State waters (DEQ subsequently determined that approximately 150 linear feet of streambed and stream channel had been solidified with concrete); and
  - c. A violation of Water Quality Standards for pH was noted in the UT below the unpermitted discharge point.

5. On April 8, 2004, the DEQ received a written response from Lesueur, which stated that Lesueur “will take immediate steps to contain any process water by building a temporary settling basin.”
6. On April 13, 2004, the DEQ inspected the Facility and found that the settling basin had yet to be installed.
7. On April 23, 2004, DEQ enforcement staff via telephone interviewed the individual who made the original pollution complaint. The individual stated to DEQ that Lesueur was continuing to discharge, and the latest discharge of concrete process water to the UT was observed on April 19, 2004.
8. Lesueur did not report any discharge in accordance with Va. Code § 62.1-44.5.B and 9 VAC 25-31-50.B.
9. On April 27, 2004, the DEQ re-inspected the Facility. The DEQ observed that the settling basin had not been installed, and the DEQ inspectors observed a truck discharging concrete process water that reached State waters.
10. On May 5, 2004, the DEQ met with Lesueur. The DEQ hand delivered an additional NOV, number NOV-04-04-SCRO-006, dated March 4, 2004, for failure to obtain a permit and the unpermitted discharge observed on the April 27, 2004 inspection.
11. The week following the May 5, 2004, meeting Lesueur installed tanks to hold the concrete process water from the ready mix trucks.
12. On May 13, 2004, Lesueur submitted an application for coverage under the VPDES general permit for ready mix plants.
13. On June 16, 2004, the DEQ issued a VPDES general permit to Lesueur, registration number VAG110196, for the Facility.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders Lesueur, and Lesueur consents, to perform the actions contained in Appendix A of this Order. In addition, the Board orders Lesueur, and Lesueur consents, to pay a civil charge of \$5,000.00 in settlement of the violations cited in this Order. The payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include Lesueur's Federal Identification Number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Lesueur, for good cause shown by Lesueur, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Lesueur admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Lesueur consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Lesueur declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Lesueur to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Lesueur shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrence. Lesueur shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Lesueur and not due to a lack of good faith or diligence. Lesueur shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - d. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which Lesueur intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
10. This Order shall become effective upon execution by the Director, or his designee, and Lesueur.
11. This Order shall continue in effect until:
  - a. Lesueur petitions the Regional Director to terminate the Order after it has completed all requirements of the Order; or

- b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Lesueur.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Lesueur from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Lesueur consents to the issuance of this Order.

And it is so ORDERED this 23rd day of March, 2005.


  
Robert G. Burnley, Director  
Department of Environmental Quality

Lesueur consents to the issuance of this Order.

Date: 1/17/05 By: R. H. Rose, Jr.  
Richmond H. Rose, Jr., President, Lesueur / Richmond Slate Corporation

Commonwealth of Virginia  
City/County of Buckingham

The foregoing document was signed and acknowledged before me this 17 day  
of January, 2005, by Richmond H. Rose, Jr., President, Lesueur –  
Richmond Slate Corporation, on behalf of said corporation.

  
Sandra Aulin  
Notary Public

My commission expires: 07-03-2007.

## Appendix A

### **Lesueur shall:**

1. Within 30 days of the issuance of this Order submit a stream restoration plan to DEQ and the U.S. Army Corps of Engineers for a nation wide permit to conduct stream restoration by removing the concrete, and restoring the streambed, channel, and riparian buffer of the unnamed tributary to Purdum's Branch, James River Basin.
2. The restoration in item 1 of this Appendix shall be completed within 6 months of receiving the nation wide permit. Failure to comply with the nation wide permit issued for the stream restoration shall constitute a violation of this Order.
3. Henceforth comply with all VPDES permit requirements.
4. Unless otherwise specified in this Order, or the permits, all correspondence related to this Order shall be submitted to:

Harry F. Waggoner  
Virginia Department of Environmental Quality  
South Central Regional Office  
7705 Timberlake Road  
Lynchburg, Virginia 24502